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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

SAUL RODRIGUEZ CARLOS,

Defendant and Appellant.

B206167

(Los Angeles County
Super. Ct. No. VA080085)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Beverly Reid O'Connell, Judge. Affirmed.

Cheryl Barnes Johnson, under appointment by the Court of Appeal, for Defendant
and Appellant.

Edmund G. Brown, Jr., Attorney General, Pamela C. Hamanaka, Assistant
Attorney General, Linda C. Johnson and Scott A. Taryle, Deputy Attorneys General, for
Plaintiff and Respondent.

A jury convicted Saul Rodriguez Carlos of two counts of robbery after which Carlos admitted two prior convictions for robbery that qualified as “strikes” under the “Three Strikes” law. As relevant here, the court sentenced Carlos on the first robbery count to a term of 25 years to life under the Three Strikes law, plus 10 years for the priors. The court imposed the same sentence on the second count and ordered it to run concurrently. We affirm.

FACTS

A Hispanic man with facial acne, approximately 5 feet, 5 or 6 inches, in a hooded blue jacket entered the donut shop where Vutena Kear, his sister Vutha and Vutha’s husband Luis Hermisillo were working. The man had his right hand in the pocket of his jacket. He told Vutena: “Give me everything you got in the register.” Vutena testified that he obeyed the man’s order because he was afraid. After he opened the cash register drawer Vutena approached Vutha and told her that the man wanted their money. Vutha told Luis what was happening and Luis came to the counter and shut the drawer before the man could take the money.

After Luis shut the drawer, the man grabbed the register on each side and turned it counter-clockwise so that the register keys were facing him. The man then tried to open the register but could not do so. Vutha testified that she was afraid of what the man might do if he could not get the drawer open so she opened it for him. The man took the money from the register, approximately \$200, and ran out of the store. The victims reported the crime to the Los Angeles County Sheriff.

A Sheriff's Department technician examining the cash register found a usable latent fingerprint that a fingerprint expert determined belonged to Carlos. When deputies arrested Carlos two weeks later at his home, they found a hooded blue jacket in his bedroom and observed that he had severe acne. His house was within a mile of the donut shop. At trial, over three years after the robbery, none of the witnesses could identify Carlos as the robber.

DISCUSSION

I. SUFFICIENCY OF THE EVIDENCE THAT CARLOS WAS THE ROBBER

Contrary to Carlos' argument on appeal, his fingerprint on the cash register, his matching physical characteristics of acne, height and ethnicity to the robber, his possession of a dark blue hooded jacket shortly after the crime, and the nearness of his house to the donut shop provided sufficient evidence to support Carlos' conviction.

Vutena testified that the robber grabbed the register by its sides and turned it. Carlos' fingerprint was found on the left side of the register. When the register was facing an employee behind the counter the left side of the register was next to the display case, an area where customers normally did not put their hands. The location of the print, and the victims' testimony that they had never seen the robber before made it unlikely Carlos might have touched the side of the register on some other occasion when he was a customer. (Cf. *Mikes v. Borg* (9th Cir. 1991) 947 F.2d 353, 355-356 [defendant's fingerprint found on an object routinely touched numerous times by members of the public] with *Schell v. Witek* (9th Cir. 2000) 218 F.3d 1017, 1022-1023 [defendant's fingerprint found on window sill of victim's home].)

Other evidence corroborated the jury's finding that Carlos was the robber. The police found a blue hooded sweater similar to the one worn by the robber in Carlos' bedroom following his arrest. Carlos lived less than a mile from the donut shop. Vutena and Luis described the robber as short—approximately 5 feet, 5 or 6 inches. Carlos is approximately 5 feet, 4 inches tall. Vutha described the robber as having acne and only two weeks later Officer Jones observed severe acne on Carlos' face. It is undisputed Carlos is Hispanic.

II. DENIAL OF CARLOS' REQUEST TO STRIKE A STRIKE

Carlos asked the court to exercise its discretion under Penal Code section 1385 to strike one of his prior robbery convictions and impose a double-the-base-term two strike

sentence rather than a 25-year-to-life third strike sentence. (See *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497.) The court denied Carlos' request.

On appeal, Carlos contends the trial court abused its discretion in denying his request to strike a strike because it failed to base its decision on an individualized consideration of the offense, the offender and the public interest. (*People v. Superior Court (Romero)*, *supra*, 13 Cal.4th at pp. 530-531.) The record contradicts this assertion. In addressing Carlos' *Romero* request the court stated: "I have *read and considered* your moving papers, and *looking at the individual characteristics* [sic] of Mr. Carlos in determining whether or not under my discretion . . . to strike the prior convictions." (Italics added.) The court then recited Carlos' "long and varied criminal history" which included "numerous arrests and convictions dating back to 1986 and 1989 [for] possessing a dangerous weapon, burglary, [possession of a] firearm, robbery, petty theft, being under the influence, robbery, [and] assault."

Carlos does not dispute the accuracy of his criminal history as recited by the trial court nor did he offer any evidence in mitigation of his record. Instead he argues that although his criminal record is "serious" it is not "sufficient alone to merit a life sentence." Carlos misunderstands the Three Strikes sentencing scheme. Any third felony conviction in addition to two serious or violent felony convictions is "sufficient alone" to impose a 25-year-to-life sentence. Section 1385 acts as a safety valve exception to the 25-year-to-life sentence for cases in which "extraordinary" circumstances take the offender "outside the spirit of the three strikes scheme." (*People v. Carmony* (2004) 33 Cal.4th 367, 378.) Carlos has shown no such extraordinary circumstances.

DISPOSITION

The judgment is affirmed.

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ROTHSCHILD, J.

We concur:

MALLANO, P. J.

MILLER, J.*

* Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.